

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2004-178-E

ACCEPTED
Legal 202 10-28-04

In re:)
)
South Carolina Electric & Gas)
Company—Application for)
Adjustments in the Company's)
Electric Rate Schedules and Tariffs)
)
_____)

**COLUMBIA ENERGY LLC'S
MOTION TO STRIKE TESTIMONY
OF SCE&G**

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PUBLIC SERVICE COMMISSION

Pursuant to R. 103-840 and R. 103-870 of this Commission's Rules of Practice and Procedure, and Rules 602 and 802 of the South Carolina Rules of Evidence, Columbia Energy moves to strike the following rebuttal testimony of SCE&G witness Neville Lorick: page 8, line 18 through page 9, line 7. The basis for the motion is that there is an insufficient foundation for the proposed testimony, that it is not based on personal knowledge, and that it is hearsay.

A. APPLICABLE LAW

Regulation 103-870 incorporates the South Carolina Rules of Evidence. Those rules prohibit the subject testimony. Rule 602 provides, in part, that

[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness own testimony.

Rule 802 provides that hearsay is not admissible unless an exception applies. Rules 803 and 804 supply the exceptions to the hearsay rule. None of those exceptions apply here.

B. TESTIMONY AT ISSUE

In the testimony which is the subject of this motion SCE&G witness Lorick engages in a diversionary, collateral attack on Columbia Energy. He makes several “factual” assertions about the conduct of Columbia Energy, but the testimony makes no attempt to lay any foundation for the basis of Lorick’s knowledge of those purported facts. The lack of foundation alone is sufficient to preclude this testimony under Rule 602. That rule requires that a witness testify from personal knowledge and requires that a foundation be laid to demonstrate that personal knowledge. Under this Commission’s pre-filing rules the foundation must be in the pre-filed testimony. No foundation appears there and the testimony is therefore inadmissible.

The testimony is also hearsay. It purports to describe certain meetings which took place between representatives of SCE&G and Columbia Energy. Mr. Lorick did not attend those meetings.¹ Whatever information he may have concerning the meetings came from other people who SCE&G did not choose to call as witnesses. If this testimony is allowed SCE&G would be allowed to present its version of these events without being subject to cross-examination. This of course is exactly what the rule against hearsay is designed to prevent. Rule 802 clearly precludes this testimony.

C. CONCLUSION

The testimony which is the subject of this motion is not only clearly inadmissible under Rules 602 and 802, it is wholly irrelevant to the issues in this rate case. Mr. Lorick’s unsupported speculation on the motives of Columbia Energy has nothing to do with whether his company is entitled to a rate increase of \$80 million in annual

¹ Counsel for Columbia Energy was present at the meetings in question and is prepared to sign an affidavit stating that Mr. Lorick was not present for any part of either meeting should that be necessary.

revenues. The Commission should focus on the real issues in this proceeding and should strike the inadmissible testimony of Lorick.

Dated this 21st day of October, 2004.

ROBINSON, MCFADDEN & MOORE, P.C.

A handwritten signature in cursive script, appearing to read "Frank R. Ellerbe, III", is written over a horizontal line.

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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-178-E

In Re:

Application of South Carolina
Electric & Gas Company for
Approval of an Increase in Electric
Rates and Charges

CERTIFICATE OF SERVICE

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This is to certify that I, Mary F. Cutler, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **Columbia Energy LLC's Motion to Strike Testimony of SCE & G** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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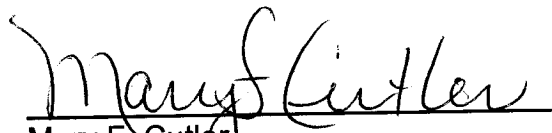
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Dated at Columbia, South Carolina this 28h day of October 2004.


Mary F. Cutler